

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4279 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

NAGINBHAI G PATEL

Versus

FIROJ J MANEKSHA

Appearance:

Shri A.J. PATEL, Advocate, for the Petitioners.

Shri B.G. PATEL, Advocate, for Respondents Nos.1
and 2.

Shri T.H.SOMPURA, Assistant Government Pleader, for
Respondent No.3.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 25/04/96

ORAL JUDGEMENT

The order passed by the Deputy Collector at Valsad (respondent No.3 herein) on 28th February 1983 under Rule 108 (6) of the Gujarat Land Revenue Rules, 1972 (the Rules for brief) framed under the Bombay Land Revenue Code, 1879 (the Code for brief) as affirmed in revision by the order passed by and on behalf of the State Government on 25th January 1985 is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, respondent No.3 set aside mutation entry No.1115 with respect to survey No.172 situated at Dulsad taluka Valsad (the disputed land for convenience) effected on 14th January 1975 and certified on 11th February 1976.

2. The facts giving rise to this petition move in a narrow compass. The disputed land originally belonged to respondent No.1. The petitioners and respondent No.2 purchased it by a registered deed executed on 4th June 1974. Pursuant thereto, mutation entry No.1115 in the revenue record was effected on 14th January 1975. It was certified on 11th February 1976. It appears to have come to the notice of respondent No.3. He appears to have found it not according to law. A show cause notice thereupon came to be issued on 6th January 1983 calling upon the petitioners to show cause why the aforesaid mutation entry should not be revised. Its copy is at Annexure-B to this petition. After hearing the parties, by his order passed on 28th February 1983, respondent No.3 set aside aforesaid mutation entry No.1115. The aggrieved petitioners carried the matter in revision before the State Government under Rule 108 (6-A) of the Rules. By the order passed by and on behalf of the State Government on 25th January 1985 in the aforesaid revisional proceeding, it came to be rejected. Its copy is at Annexure-D to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-C to this petition as affirmed in revision by the order at Annexure-D to this petition.

3. Learned Assistant Government Pleader Shri Sompura for respondent No.3 has raised a preliminary contention regarding maintainability of this petition under Article 227 of the Constitution of India. Thereupon, learned Advocate Shri Patel for the petitioners has orally applied for leave to convert this petition as also under Article 226 of the Constitution of India. Such oral

request is accepted and this petition is ordered to be treated as also under Article 226 of the Constitution of India on payment of the deficit court fees, if any, within two weeks from today.

4. It transpires from the material on record that the mutation entry in question was effected on 14th January 1975 and it was certified on 11th February 1976. It was sought to be revised by means of the show cause notice issued on 6th January 1983 at Annexure-B to this petition about seven years after the date of its certification. This respondent No.3 could not have done in view of the binding ruling of the Supreme Court in the case of STATE OF GUJARAT v. PATEL RAGHAV NATHA reported in (1969) 10 Gujarat Law Reporter at page 992 and in view of the binding Division Bench ruling of this court in the case of BHAGWANJI BAWANJI PATEL v. STATE OF GUJARAT reported in (1971) 12 Gujarat Law Reporter at page 156.

5. It is true that the aforesaid binding rulings were in the context of section 211 of the Code. It cannot be gainsaid that the revisional powers under Rule 108 (6) of the Rules are akin to those contained in section 211 of the Code. In that view of the matter, what applies to section 211 of the Code would apply with equal force to Rule 108 (6) of the Rules. It is unfortunate that the author of the impugned order at Annexure-D to this petition has come to the conclusion that there is no time-limit prescribed for exercise of revisional powers though the aforesaid two binding rulings were cited before him and they are mentioned in the impugned order at Annexure-D to this petition. Respondent No.3 could not have bypassed the aforesaid binding rulings.

6. In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexures-C and D to this petition cannot be sustained in law. They deserve to be quashed and set aside.

7. In the result, this petition is accepted. The order passed by the Deputy Collector at Valsad on 28th February 1983 at Annexure-C to this petition as affirmed in revision by the order passed by and on behalf of the State Government on 25th January 1985 at Annexure-D to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.

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